

106TH CONGRESS  
2D SESSION

# S. 2836

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to affordable outpatient prescription drugs.

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## IN THE SENATE OF THE UNITED STATES

JUNE 30, 2000

Mr. HAGEL (for himself, Mr. ABRAHAM, Mr. HUTCHINSON, Mr. BURNS, Mr. COVERDELL, Mr. MCCAIN, Mr. ASHCROFT, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to affordable outpatient prescription drugs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Rx Drug Discount and Security Act of 2000”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Voluntary Medicare Outpatient Prescription Drug Discount and Security Program.

“PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG  
DISCOUNT AND SECURITY PROGRAM

“Sec. 1860. Definitions.

“SUBPART 1—ESTABLISHMENT OF VOLUNTARY MEDICARE OUTPATIENT  
PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

“Sec. 1860A. Establishment of program.

“Sec. 1860B. Enrollment.

“Sec. 1860C. Providing information to beneficiaries.

“Sec. 1860D. Annual enrollment fee.

“Sec. 1860E. Benefits under the program.

“Sec. 1860F. Selection of entities to provide outpatient drug benefit.

“Sec. 1860G. Payments to eligible entities for administering the cata-  
strophic benefit.

“Sec. 1860H. Determination of income levels.

“Sec. 1860I. Appropriations.

“SUBPART 2—ESTABLISHMENT OF THE MEDICARE PRESCRIPTION DRUG  
AGENCY

“Sec. 1860L. Medicare Prescription Drug Agency.

“Sec. 1860M. Commissioner; Deputy Commissioner; other officers.

“Sec. 1860N. Administrative duties of the Commissioner.

“Sec. 1860O. Duties and authority of the Secretary.”.

Sec. 3. Exclusion of part D costs from determination of part B monthly pre-  
mium.

Sec. 4. Medigap revisions.

**1 SEC. 2. VOLUNTARY MEDICARE OUTPATIENT PRESCRIP-**  
**2 TION DRUG DISCOUNT AND SECURITY PRO-**  
**3 GRAM.**

**4 (a) ESTABLISHMENT OF PROGRAM.**—Title XVIII of  
**5 the Social Security Act (42 U.S.C. 1395 et seq.) is amend-**  
**6 ed by redesignating part D as part E and by inserting**  
**7 after part C the following new part:**

**8 “PART D—VOLUNTARY MEDICARE OUTPATIENT PRE-**  
**9 SCRIPTON DRUG DISCOUNT AND SECURITY PRO-**  
**10 GRAM**

**11 “DEFINITIONS**

**12 “SEC. 1860. In this part:**

1           “(1) COMMISSIONER.—The term ‘Commis-  
 2           sioner’ means the Commissioner of Medicare Pre-  
 3           scription Drugs established under subpart 2.

4           “(2) COVERED OUTPATIENT DRUG.—

5                 “(A) IN GENERAL.—Except as provided in  
 6           subparagraph (B), the term ‘covered outpatient  
 7           drug’ means—

8                     “(i) a drug that may be dispensed  
 9                     only upon a prescription and that is de-  
 10                   scribed in clause (i) or (ii) of subparagraph  
 11                   (A) of section 1927(k)(2); or

12                    “(ii) a biological product or insulin de-  
 13                   scribed in subparagraph (B) or (C) of such  
 14                   section.

15           “(B) EXCLUSIONS.—

16                 “(i) IN GENERAL.—The term ‘covered  
 17           outpatient drug’ does not include drugs or  
 18           classes of drugs, or their medical uses,  
 19           which may be excluded from coverage or  
 20           otherwise restricted under section  
 21           1927(d)(2), other than subparagraph (E)  
 22           thereof (relating to smoking cessation  
 23           agents).

24                 “(ii) AVOIDANCE OF DUPLICATE COV-  
 25           ERAGE.—A drug prescribed for an indi-

1           vidual that would otherwise be a covered  
 2           outpatient drug under this part shall not  
 3           be so considered if payment for such drug  
 4           is available under part A or B (but shall  
 5           be so considered if such payment is not  
 6           available because benefits under part A or  
 7           B have been exhausted), without regard to  
 8           whether the individual is entitled to bene-  
 9           fits under part A or enrolled under part B.

10           “(3) ELIGIBLE BENEFICIARY.—In this section,  
 11           the term ‘eligible beneficiary’ means an individual  
 12           who is—

13                   “(A) eligible for benefits under part A or  
 14                   enrolled under part B; and

15                   “(B) not eligible for medical assistance  
 16                   consisting of prescribed drugs under title XIX.

17           “(4) ELIGIBLE ENTITY.—The term ‘eligible en-  
 18           tity’ means any entity that the Commissioner deter-  
 19           mines to be appropriate to provide the benefits  
 20           under this part, including—

21                   “(A) pharmaceutical benefit management  
 22                   companies;

23                   “(B) wholesale and retail pharmacist deliv-  
 24                   ery systems;

25                   “(C) insurers;

1 “(D) Medicare+Choice organizations;

2 “(E) other entities; or

3 “(F) any combination of the entities de-  
4 scribed in subparagraphs (A) through (E).

5 “(5) POVERTY LINE.—The term ‘poverty line’  
6 means the income official poverty line (as defined by  
7 the Office of Management and Budget, and revised  
8 annually in accordance with section 673(2) of the  
9 Omnibus Budget Reconciliation Act of 1981) appli-  
10 cable to a family of the size involved.

11 “SUBPART 1—ESTABLISHMENT OF VOLUNTARY MEDI-  
12 CARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT  
13 AND SECURITY PROGRAM

14 “ESTABLISHMENT OF PROGRAM

15 “SEC. 1860A. (a) PROVISION OF BENEFIT.—The  
16 Commissioner shall establish a Medicare Outpatient Pre-  
17 scription Drug Discount and Security Program under  
18 which an eligible beneficiary may voluntarily enroll and re-  
19 ceive benefits under this part through enrollment with a  
20 private entity with a contract under this part.

21 “(b) PROGRAM TO BEGIN IN 2002.—The Commis-  
22 sioner shall establish the program under this part in a  
23 manner so that benefits are first provided for months be-  
24 ginning with January 2002.

1       “(c) VOLUNTARY NATURE OF PROGRAM.—Nothing  
 2 in this part shall be construed as requiring an eligible ben-  
 3 eficiary to enroll in the program under this part.

4       “(d) FINANCING.—The costs of providing benefits  
 5 under this part shall be payable from the Federal Supple-  
 6 mentary Medical Insurance Trust Fund established under  
 7 section 1841.

8                               “ENROLLMENT

9       “SEC. 1860B. (a) ENROLLMENT UNDER PART D.—

10               “(1) ESTABLISHMENT OF PROCESS.—

11                       “(A) IN GENERAL.—The Commissioner  
 12 shall establish a process through which an eligi-  
 13 ble beneficiary (including an eligible beneficiary  
 14 enrolled in a Medicare+Choice plan offered by  
 15 a Medicare+Choice organization) may make an  
 16 election to enroll under this part. Except as  
 17 otherwise provided in this subsection, such  
 18 process shall be similar to the process for en-  
 19 rollment in part B under section 1837.

20                       “(B) REQUIREMENT OF ENROLLMENT.—

21 An eligible beneficiary must enroll under this  
 22 part in order to be eligible to receive the bene-  
 23 fits under this part.

24               “(2) ENROLLMENT PERIOD.—

25                       “(A) IN GENERAL.—Except as provided in  
 26 subparagraph (B) or (C), an eligible beneficiary

1 may not enroll in the program under this part  
2 during any period after the beneficiary's initial  
3 enrollment period.

4 “(B) OPEN ENROLLMENT PERIOD IN 2002  
5 FOR CURRENT BENEFICIARIES.—The Commis-  
6 sioner shall establish a period, which shall begin  
7 on the date on which the Commissioner first be-  
8 gins to accept elections for enrollment under  
9 this part and shall end on December 31, 2002,  
10 during which any eligible beneficiary may—

11 “(i) enroll under this part; or

12 “(ii) enroll or re-enroll under this part  
13 after having previously declined or termi-  
14 nated such enrollment.

15 “(C) SPECIAL ENROLLMENT PERIOD.—In  
16 the case of eligible beneficiaries that have re-  
17 cently lost eligibility for medical assistance con-  
18 sisting of prescribed drugs under title XIX, the  
19 Commissioner shall establish a special enroll-  
20 ment period in which such beneficiaries may en-  
21 roll under this part.

22 “(3) PERIOD OF COVERAGE.—

23 “(A) IN GENERAL.—Except as provided in  
24 subparagraph (B) and subject to subparagraph  
25 (C), an eligible beneficiary's coverage under the

1 program under this part shall be effective for  
 2 the period provided in section 1838, as if that  
 3 section applied to the program under this part.

4 “(B) ENROLLMENT DURING OPEN AND  
 5 SPECIAL ENROLLMENT.—Subject to subpara-  
 6 graph (C), an eligible beneficiary who enrolls  
 7 under the program under this part pursuant to  
 8 subparagraph (B) or (C) of paragraph (2) shall  
 9 be entitled to the benefits under this part begin-  
 10 ning on the first day of the month following the  
 11 month in which such enrollment occurs.

12 “(C) LIMITATION.—Coverage under this  
 13 part shall not begin prior to January 1, 2002.

14 “(4) PART D COVERAGE TERMINATED BY TER-  
 15 MINATION OF COVERAGE UNDER PARTS A AND B OR  
 16 ELIGIBILITY FOR MEDICAL ASSISTANCE.—

17 “(A) IN GENERAL.—In addition to the  
 18 causes of termination specified in section 1838,  
 19 the Commissioner shall terminate an individ-  
 20 ual’s coverage under this part if the  
 21 individual—

22 “(i) is no longer enrolled in either  
 23 part A or B; or



1 “(ii) is eligible for medical assistance  
 2 consisting of prescribed drugs under title  
 3 XIX.

4 “(B) EFFECTIVE DATE.—The termination  
 5 described in subparagraph (A) shall be effective  
 6 on the effective date of—

7 “(i) the termination of coverage under  
 8 part A or (if later) under part B; or

9 “(ii) the coverage under title XIX.

10 “(b) ENROLLMENT WITH ELIGIBLE ENTITY.—

11 “(1) PROCESS.—

12 “(A) IN GENERAL.—The Commissioner  
 13 shall establish a process through which an eligi-  
 14 ble beneficiary who is enrolled under this part  
 15 shall make an annual election to enroll with any  
 16 eligible entity that has been awarded a contract  
 17 under this part and serves the geographic area  
 18 in which the beneficiary resides.

19 “(B) RULES.—In establishing the process  
 20 under subparagraph (A), the Commissioner  
 21 shall use rules similar to the rules for enroll-  
 22 ment and disenrollment with a  
 23 Medicare+Choice plan under section 1851 (in-  
 24 cluding special election periods under subsection  
 25 (e)(4) of such section).

1           “(2) MEDICARE+CHOICE ENROLLEES.—An eli-  
 2           gible beneficiary who is enrolled under this part and  
 3           enrolled in a Medicare+Choice plan offered by a  
 4           Medicare+Choice organization must enroll with an  
 5           eligible entity in order to receive benefits under this  
 6           part. The beneficiary may elect to receive such bene-  
 7           fits from the Medicare+Choice organization in  
 8           which the beneficiary is enrolled if the organization  
 9           has been awarded a contract under this part.

10           “(3) COMPETITION.—Eligible entities with a  
 11           contract under this part shall compete for bene-  
 12           ficiaries on the basis of the discounts, formularies,  
 13           pharmacy networks, and other services under the  
 14           contract.

15           “(c) FIRST ENROLLMENT PERIOD.—The processes  
 16           developed under subsections (a) and (b) shall ensure that  
 17           eligible beneficiaries are permitted to enroll under this  
 18           part and with an eligible entity prior to January 1, 2002,  
 19           in order to ensure that coverage under this part is effective  
 20           as of such date.

21           “PROVIDING INFORMATION TO BENEFICIARIES

22           “SEC. 1860C. (a) ACTIVITIES.—The Commissioner  
 23           shall provide for activities under this part to broadly dis-  
 24           seminate information to eligible beneficiaries (and pro-  
 25           spective eligible beneficiaries) regarding the coverage pro-  
 26           vided under this part.

1       “(b) SPECIAL RULE FOR FIRST ENROLLMENT  
 2 UNDER THE PROGRAM.—To the extent practicable, the  
 3 activities described in subsection (a) shall ensure that eli-  
 4 gible beneficiaries are provided with such information at  
 5 least 60 days prior to the first enrollment period described  
 6 in section 1860B(c).

7                       “ANNUAL ENROLLMENT FEE

8       “SEC. 1860D. (a) AMOUNT.—

9               “(1) IN GENERAL.—Except as provided in sub-  
 10 section (c), enrollment under the program under this  
 11 part is conditioned upon payment of a \$35 annual  
 12 enrollment fee.

13              “(2) ADJUSTMENT.—The Commissioner may,  
 14 as determined appropriate, annually adjust the dol-  
 15 lar amount under paragraph (1) to reflect inflation  
 16 and changes in the costs and utilization under the  
 17 program over time.

18       “(b) COLLECTION OF ANNUAL ENROLLMENT FEE.—  
 19 The annual enrollment fee described in subsection (a)  
 20 shall be collected and credited to the Federal Supple-  
 21 mentary Medical Insurance Trust Fund in the same man-  
 22 ner as the monthly premium determined under section  
 23 1839 is collected and credited to such Trust Fund under  
 24 section 1840.

25       “(c) WAIVER.—The Commissioner shall waive the en-  
 26 rollment fee described in subsection (a) in the case of an

1 eligible beneficiary whose income is below 200 percent of  
2 the poverty line.

3 “BENEFITS UNDER THE PROGRAM

4 “SEC. 1860E. (a) ACCESS TO NEGOTIATED  
5 PRICES.—

6 “(1) IN GENERAL.—An eligible entity with a  
7 contract under this part shall provide eligible bene-  
8 ficiaries enrolled with the entity with access to nego-  
9 tiated prices (including applicable discounts) used  
10 for payment for prescription drugs for which cov-  
11 erage is not otherwise provided under this part.

12 “(2) DISCOUNT CARD.—An eligible entity shall  
13 issue such a card that may be used by an enrolled  
14 beneficiary to assure the access to negotiated prices  
15 under paragraph (1).

16 “(b) CATASTROPHIC BENEFIT.—

17 “(1) IN GENERAL.—Subject to paragraph (4)  
18 (relating to eligibility for the catastrophic benefit)—

19 “(A) BENEFICIARIES WITH INCOME BELOW  
20 200 PERCENT OF POVERTY LINE.—In the case  
21 of an eligible beneficiary whose income is below  
22 200 percent of the poverty line, the beneficiary  
23 shall not be responsible for making a payment  
24 for a covered outpatient drug provided to the  
25 beneficiary in a year to the extent that the out-  
26 of-pocket expenses of the beneficiary for such

1 drug, when added to the out-of-pocket expenses  
2 of the beneficiary for covered outpatient drugs  
3 previously provided in the year, exceed \$1,200.

4 “(B) BENEFICIARIES WITH INCOME BE-  
5 TWEEN 200 AND 400 PERCENT OF POVERTY  
6 LINE.—In the case of an eligible beneficiary  
7 whose income exceeds 200 percent but does not  
8 exceed 400 percent of the poverty line, the ben-  
9 eficiary shall not be responsible for making a  
10 payment for a covered outpatient drug provided  
11 to the beneficiary in a year to the extent that  
12 the out-of-pocket expenses of the beneficiary for  
13 such drug, when added to the out-of-pocket ex-  
14 penses of the beneficiary for covered outpatient  
15 drugs previously provided in the year, exceed  
16 \$2,500.

17 “(C) BENEFICIARIES WITH INCOME ABOVE  
18 400 PERCENT OF POVERTY LINE.—In the case  
19 of an eligible beneficiary whose income exceeds  
20 400 percent of the poverty line, the beneficiary  
21 shall not be responsible for making a payment  
22 for a covered outpatient drug provided to the  
23 beneficiary in a year to the extent that the out-  
24 of-pocket expenses of the beneficiary for such  
25 drug, when added to the out-of-pocket expenses

1 of the beneficiary for covered outpatient drugs  
2 previously provided in the year, exceed \$5,000.

3 “(2) ADJUSTMENT.—The Commissioner may,  
4 as determined appropriate, annually adjust the dol-  
5 lar amounts under subparagraph (A) to reflect infla-  
6 tion and changes in the costs and utilization under  
7 the program over time.

8 “(3) ELIGIBLE ENTITY NOT AT RISK FOR CATA-  
9 STROPHIC BENEFIT.—

10 “(A) IN GENERAL.—The Commissioner,  
11 not the eligible entity, shall be at risk for the  
12 provision of the catastrophic benefit under this  
13 subsection.

14 “(B) PROVISIONS RELATING TO PAYMENTS  
15 TO ELIGIBLE ENTITIES.—For provisions relat-  
16 ing to payments to eligible entities for admin-  
17 istering the catastrophic benefit under this sub-  
18 section, see section 1860G.

19 “(4) CATASTROPHIC BENEFIT NOT AVAILABLE  
20 TO CERTAIN HIGH INCOME INDIVIDUALS.—

21 “(A) IN GENERAL.—An eligible beneficiary  
22 enrolled under this part whose modified ad-  
23 justed gross income for a taxable year exceeds  
24 the applicable amount shall not be eligible for  
25 the catastrophic benefit under this subsection.

1           “(B) BENEFICIARY STILL ELIGIBLE FOR  
2 DISCOUNT BENEFIT.—Nothing in subparagraph  
3 (A) shall be construed as effecting the eligibility  
4 of a beneficiary described in such subparagraph  
5 for the benefits under subsection (a).

6           “(C) PROCEDURES FOR DETERMINING  
7 MODIFIED ADJUSTED GROSS INCOME.—

8           “(i) IN GENERAL.—The Commis-  
9 sioner shall establish procedures for deter-  
10 mining the modified adjusted gross income  
11 of eligible beneficiaries enrolled under this  
12 part.

13           “(ii) CONSULTATION.—The Commis-  
14 sioner shall consult with the Secretary of  
15 the Treasury in making the determinations  
16 described in clause (i).

17           “(iii) DISCLOSURE OF INFORMA-  
18 TION.—Notwithstanding section 6103(a) of  
19 the Internal Revenue Code of 1986, the  
20 Secretary of the Treasury may, upon writ-  
21 ten request from the Commissioner, dis-  
22 close to officers and employees of the  
23 Medicare Prescription Drug Agency such  
24 return information as is necessary to make  
25 the determinations described in clause (i).

1           Return information disclosed pursuant to  
 2           the preceding sentence may be used by of-  
 3           ficers and employees of the Medicare Pre-  
 4           scription Drug Agency only for the pur-  
 5           poses of, and to the extent necessary in,  
 6           making such determinations.

7           “(D)    DEFINITION    OF    APPLICABLE  
 8           AMOUNT.—For purposes of this paragraph, the  
 9           term ‘applicable amount’ means—

10                   “(i) except as otherwise provided in  
 11                   this subparagraph, \$100,000;

12                   “(ii) \$200,000 in the case of a tax-  
 13                   payer who files a joint return; and

14                   “(iii) zero in the case of a taxpayer  
 15                   who—

16                           “(I) is married at the close of the  
 17                           taxable year but does not file a joint  
 18                           return for such year; and

19                           “(II) does not live apart from his  
 20                           spouse at all times during the taxable  
 21                           year.

22           “(E) DEFINITION OF MODIFIED ADJUSTED  
 23           GROSS INCOME.—For purposes of this para-  
 24           graph, the term ‘modified adjusted gross in-  
 25           come’ means adjusted gross income (as defined



1 in section 62 of the Internal Revenue Code of  
2 1986)—

3 “(i) determined without regard to sec-  
4 tions 135, 911, 931, and 933 of such  
5 Code; and

6 “(ii) increased by the amount of inter-  
7 est received or accrued by the taxpayer  
8 during the taxable year which is exempt  
9 from tax under such Code.

10 “(F) DEFINITION OF JOINT RETURN.—For  
11 purposes of this paragraph, the term ‘joint re-  
12 turn’ has the meaning given the term in section  
13 7701(a)(38) of the Internal Revenue Code of  
14 1986.

15 “(5) ASSURING CATASTROPHIC BENEFIT IN ALL  
16 AREAS.—The Commissioner shall develop procedures  
17 for the provision of the catastrophic benefit under  
18 this subsection to each eligible beneficiary that re-  
19 sides in an area where there are no eligible entities  
20 that have been awarded a contract under this part.

21 “SELECTION OF ENTITIES TO PROVIDE OUTPATIENT  
22 DRUG BENEFIT

23 “SEC. 1860F. (a) ESTABLISHMENT OF BIDDING  
24 PROCESS.—The Commissioner shall establish a process  
25 under which the Commissioner accepts bids from eligible

1 entities and awards contracts to the entities to provide the  
 2 benefits under this part to eligible beneficiaries in an area.

3 “(b) SUBMISSION OF BIDS.—Each eligible entity de-  
 4 siring to enter into a contract under this part shall submit  
 5 a bid to the Commissioner at such time, in such manner,  
 6 and accompanied by such information as the Commis-  
 7 sioner may reasonably require.

8 “(c) AWARDING OF CONTRACTS.—

9 “(1) IN GENERAL.—The Commissioner shall,  
 10 consistent with the requirements of this part and the  
 11 goal of containing medicare program costs, award at  
 12 least 2 contracts in an area, unless only 1 bidding  
 13 entity meets the terms and conditions specified by  
 14 the Commissioner pursuant to paragraph (2).

15 “(2) TERMS AND CONDITIONS.—

16 “(A) IN GENERAL.—The Commissioner  
 17 shall not award a contract to an eligible entity  
 18 under this section unless the Commissioner  
 19 finds that the eligible entity is in compliance  
 20 with such terms and conditions as the Commis-  
 21 sioner shall specify.

22 “(B) PROCEDURES TO ENSURE PROPER  
 23 UTILIZATION AND TO AVOID ADVERSE DRUG  
 24 REACTIONS.—The terms and conditions estab-  
 25 lished pursuant to subparagraph (A) shall in-

1           clude a requirement that an eligible entity have  
2           in place procedures to ensure—

3                   “(i) the appropriate utilization of pre-  
4                   scription drugs by eligible beneficiaries en-  
5                   rolled with the entity; and

6                   “(ii) the avoidance of adverse drug re-  
7                   actions among such beneficiaries.

8                   “(C) CLINICAL GUIDELINE REQUIREMENTS  
9                   AND FORMULARY STANDARDS.—The terms and  
10                  conditions established pursuant to subpara-  
11                  graph (A) shall include clinical guideline re-  
12                  quirements and formulary standards.

13                  “(3) COMPARATIVE MERITS.—In determining  
14                  which of the eligible entities that submitted bids that  
15                  meet the terms and conditions specified by the Com-  
16                  missioner pursuant to paragraph (2) to award a con-  
17                  tract, the Commissioner shall consider the compara-  
18                  tive merits of each of the bids.

19                  “PAYMENTS TO ELIGIBLE ENTITIES FOR ADMINISTERING  
20                                   THE CATASTROPHIC BENEFIT

21                  “SEC. 1860G. (a) PROCEDURES.—The Commissioner  
22                  shall establish procedures for making payments to an eligi-  
23                  ble entity under a contract entered into under this part  
24                  for administering the catastrophic benefit under section  
25                  1860E(b).

26                  “(b) ADMINISTRATIVE FEE.—

1           “(1) PROCEDURES.—The procedures estab-  
 2           lished pursuant to subsection (a) shall provide for  
 3           payment to the eligible entity of an administrative  
 4           fee for each prescription filled by the entity for an  
 5           eligible beneficiary—

6                   “(A) who is enrolled with the entity; and

7                   “(B) to whom subparagraph (A), (B), or  
 8           (C) of section 1860E(b)(1) applies with respect  
 9           to a covered outpatient drug.

10           “(2) AMOUNT.—The fee described in paragraph  
 11           (1) shall be—

12                   “(A) negotiated by the Commissioner; and

13                   “(B) consistent with such fees paid under  
 14           private sector pharmaceutical benefit contracts.

15           “(c) SECONDARY PAYER PROVISIONS.—The provi-  
 16           sions of section 1862(b) shall apply to the benefits pro-  
 17           vided under this part.

18           “DETERMINATION OF INCOME LEVELS

19           “SEC. 1860H. (a) PROCEDURES.—The Commis-  
 20           sioner shall establish procedures for determining the in-  
 21           come levels of eligible beneficiaries for purposes of sections  
 22           1860D(c) and 1860E(b).

23           “(b) PERIODIC REDETERMINATIONS.—Such income  
 24           determinations shall be valid for a period (of not less than  
 25           1 year) specified by the Commissioner.

1 “APPROPRIATIONS

2 “SEC. 1860I. There are authorized to be appro-  
 3 priated from time to time, out of any moneys in the Treas-  
 4 ury not otherwise appropriated, to the Federal Supple-  
 5 mentary Medical Insurance Trust Fund established under  
 6 section 1841, an amount equal to the amount by which  
 7 the benefits and administrative costs of providing the ben-  
 8 efits under this part exceed the enrollment fees collected  
 9 under section 1860D.

10 “SUBPART 2—ESTABLISHMENT OF THE MEDICARE  
 11 PRESCRIPTION DRUG AGENCY

12 “MEDICARE PRESCRIPTION DRUG AGENCY

13 “SEC. 1860L. (a) ESTABLISHMENT.—There is estab-  
 14 lished, as an independent agency in the executive branch  
 15 of the Government, a Medicare Prescription Drug Agency  
 16 (in this subpart referred to as the ‘Agency’).

17 “(b) DUTY.—It shall be the duty of the Agency to  
 18 administer the Voluntary Medicare Outpatient Prescrip-  
 19 tion Drug Discount and Security Program under subpart  
 20 1.

21 “COMMISSIONER; DEPUTY COMMISSIONER; OTHER  
 22 OFFICERS

23 “SEC. 1860M. (a) COMMISSIONER OF MEDICARE  
 24 PRESCRIPTION DRUGS.—

25 “(1) APPOINTMENT.—There shall be in the  
 26 Agency a Commissioner of Medicare Prescription

1       Drugs who shall be appointed by the President, by  
2       and with the advice and consent of the Senate.

3               “(2) COMPENSATION.—The Commissioner shall  
4       be compensated at the rate provided for level I of  
5       the Executive Schedule.

6               “(3) TERM.—

7                       “(A) IN GENERAL.—The Commissioner  
8       shall be appointed for a term of 6 years.

9                       “(B) CONTINUANCE IN OFFICE.—In any  
10       case in which a successor does not take office  
11       at the end of a Commissioner’s term of office,  
12       such Commissioner may continue in office until  
13       the appointment of a successor.

14                      “(C) DELAYED APPOINTMENTS.—A Com-  
15       missioner appointed to a term of office after the  
16       commencement of such term may serve under  
17       such appointment only for the remainder of  
18       such term.

19                      “(D) REMOVAL.—An individual serving in  
20       the office of Commissioner may be removed  
21       from office only pursuant to a finding by the  
22       President of neglect of duty or malfeasance in  
23       office.

24               “(4) RESPONSIBILITIES.—The Commissioner  
25       shall be responsible for the exercise of all powers

1 and the discharge of all duties of the Agency, and  
2 shall have authority and control over all personnel  
3 and activities thereof.

4 “(5) PROMULGATION OF RULES AND REGULA-  
5 TIONS.—

6 “(A) IN GENERAL.—The Commissioner  
7 may prescribe such rules and regulations as the  
8 Commissioner determines necessary or appro-  
9 priate to carry out the functions of the Agency.

10 “(B) RULEMAKING.—The regulations pre-  
11 scribed by the Commissioner shall be subject to  
12 the rulemaking procedures established under  
13 section 553 of title 5, United States Code.

14 “(6) DETERMINATION OF ADMINISTRATIVE OR-  
15 GANIZATION.—The Commissioner may establish,  
16 alter, consolidate, or discontinue such organizational  
17 units or components within the Agency as the Com-  
18 missioner considers necessary or appropriate, except  
19 that this paragraph shall not apply with respect to  
20 any unit, component, or provision provided for by  
21 this Act.

22 “(7) DELEGATION OF AUTHORITY.—

23 “(A) IN GENERAL.—The Commissioner  
24 may assign duties, and delegate, or authorize  
25 successive redelegations of, authority to act and

1 to render decisions, to such officers and employ-  
 2 ees of the Agency as the Commissioner may  
 3 find necessary.

4 “(B) EFFECT OF DELEGATION.—Within  
 5 the limitations of such delegations, redelega-  
 6 tions, or assignments, all official acts and deci-  
 7 sions of such officers and employees shall have  
 8 the same force and effect as though performed  
 9 or rendered by the Commissioner.

10 “(8) CONSULTATION WITH SECRETARY OF  
 11 HEALTH AND HUMAN SERVICES.—The Commis-  
 12 sioner and the Secretary shall consult, on an ongo-  
 13 ing basis, to ensure—

14 “(A) the coordination of the Voluntary  
 15 Medicare Outpatient Prescription Drug and  
 16 Benefit Program under subpart 1 with the pro-  
 17 grams administered by the Secretary under  
 18 parts A, B, and C and under title XIX; and

19 “(B) that adequate information concerning  
 20 benefits under parts A, B, and C and title XIX  
 21 is available to the public.

22 “(b) DEPUTY COMMISSIONER OF MEDICARE PRE-  
 23 SCRIPTIION DRUGS.—

24 “(1) APPOINTMENT.—There shall be in the  
 25 Agency a Deputy Commissioner of Medicare Pre-



1       scription Drugs (in this subpart referred to as the  
2       ‘Deputy Commissioner’) who shall be appointed by  
3       the President, by and with the advice and consent  
4       of the Senate.

5               “(2) COMPENSATION.—The Deputy Commis-  
6       sioner shall be compensated at the rate provided for  
7       level II of the Executive Schedule.

8               “(3) TERM.—

9                       “(A) IN GENERAL.—The Deputy Commis-  
10       sioner shall be appointed for a term of 6 years.

11                      “(B) CONTINUANCE IN OFFICE.—In any  
12       case in which a successor does not take office  
13       at the end of a Deputy Commissioner’s term of  
14       office, such Deputy Commissioner may continue  
15       in office until the entry upon office of such a  
16       successor.

17                     “(C) DELAYED APPOINTMENT.—A Deputy  
18       Commissioner appointed to a term of office  
19       after the commencement of such term may  
20       serve under such appointment only for the re-  
21       mainder of such term.

22               “(4) DUTIES.—

23                     “(A) IN GENERAL.—The Deputy Commis-  
24       sioner shall perform such duties and exercise

1           such powers as the Commissioner shall from  
2           time to time assign or delegate.

3           “(B) ACTING COMMISSIONER.—The Dep-  
4           uty Commissioner shall be Acting Commissioner  
5           of the Agency during the absence or disability  
6           of the Commissioner and, unless the President  
7           designates another officer of the Government as  
8           Acting Commissioner, in the event of a vacancy  
9           in the office of the Commissioner.

10          “(c) CHIEF ACTUARY.—

11           “(1) APPOINTMENT.—

12           “(A) IN GENERAL.—There shall be in the  
13           Agency a Chief Actuary, who shall be appointed  
14           by, and in direct line of authority to, the Com-  
15           missioner.

16           “(B) QUALIFICATIONS.—The Chief Actu-  
17           ary shall be appointed from individuals who  
18           have demonstrated, by their education and ex-  
19           perience, superior expertise in the actuarial  
20           sciences.

21           “(C) DUTIES.—The Chief Actuary shall  
22           serve as the chief actuarial officer of the Agen-  
23           cy, and shall exercise such duties as are appro-  
24           priate for the office of the Chief Actuary and

1 in accordance with professional standards of ac-  
 2 tuarial independence.

3 “(D) REMOVAL.—The Chief Actuary may  
 4 be removed only for cause.

5 “(2) COMPENSATION.—The Chief Actuary shall  
 6 be compensated at the highest rate of basic pay for  
 7 the Senior Executive Service under section 5382(b)  
 8 of title 5, United States Code.

9 “(d) CHIEF FINANCIAL OFFICER.—There shall be in  
 10 the Agency a Chief Financial Officer appointed by the  
 11 Commissioner in accordance with section 901(a)(2) of title  
 12 31, United States Code.

13 “(e) INSPECTOR GENERAL.—There shall be in the  
 14 Agency an Inspector General appointed by the President,  
 15 by and with the advice and consent of the Senate, in ac-  
 16 cordance with section 3(a) of the Inspector General Act  
 17 of 1978.

18 “ADMINISTRATIVE DUTIES OF THE COMMISSIONER

19 “SEC. 1860N. (a) PERSONNEL.—

20 “(1) APPOINTMENT OF ADDITIONAL OFFI-  
 21 CERS.—

22 “(A) IN GENERAL.—The Commissioner  
 23 shall appoint such additional officers and em-  
 24 ployees as the Commissioner considers nec-  
 25 essary to carry out the functions of the Agency  
 26 under this Act, and attorneys and experts may

1 be appointed without regard to the civil service  
2 laws.

3 “(B) COMPENSATION.—Except as other-  
4 wise provided in subparagraph (A) or in any  
5 other provision of law, such officers and em-  
6 ployees shall be appointed, and their compensa-  
7 tion shall be fixed, in accordance with title 5,  
8 United States Code.

9 “(2) EXPERTS AND CONSULTANTS.—The Com-  
10 missioner may procure the services of experts and  
11 consultants in accordance with the provisions of sec-  
12 tion 3109 of title 5, United States Code.

13 “(b) BUDGETARY MATTERS.—

14 “(1) ANNUAL BUDGET.—

15 “(A) SUBMISSION.—The Commissioner  
16 shall prepare an annual budget for the Agency,  
17 which shall be submitted by the President to  
18 Congress without revision, together with the  
19 President’s annual budget for the Agency.

20 “(B) COMBATTING FRAUD.—The Commis-  
21 sioner shall include in the annual budget pre-  
22 pared pursuant to subparagraph (A) an  
23 itemization of the amount of funds required by  
24 the Medicare Prescription Drug Agency for the  
25 fiscal year covered by the budget to support ef-

1           forts to combat fraud committed by applicants  
2           and beneficiaries.

3           “(2) APPROPRIATIONS REQUESTS.—

4                 “(A) STAFFING AND PERSONNEL.—Appro-  
5           priations requests for staffing and personnel of  
6           the Agency shall be based upon a comprehen-  
7           sive work force plan, which shall be established  
8           and revised from time to time by the Commis-  
9           sioner.

10                “(B) ADMINISTRATIVE EXPENSES.—Ap-  
11           propriations for administrative expenses of the  
12           Agency are authorized to be provided on a bien-  
13           nial basis.

14           “(c) EMPLOYMENT RESTRICTION.—

15                 “(1) IN GENERAL.—The total number of posi-  
16           tions described in paragraph (2) in the Agency  
17           (other than positions established under section  
18           1860M) may not exceed at any time the equivalent  
19           of 20 full-time positions.

20                 “(2) POSITIONS DESCRIBED.—The positions de-  
21           scribed in this paragraph are as follows:

22                 “(A) NONCAREER APPOINTEES.—Positions  
23           that are held by noncareer appointees (within  
24           the meaning of section 3132(a)(7) of title 5,

1 United States Code) in the Senior Executive  
2 Service.

3 “(B) EXCEPTED POSITIONS.—Positions  
4 that have been determined by the President or  
5 the Office of Personnel Management to be of a  
6 confidential, policy-determining, policy-making,  
7 or policy-advocating character and that have  
8 been excepted from the competitive service.

9 “(d) SEAL OF OFFICE.—

10 “(1) IN GENERAL.—The Commissioner shall  
11 cause a seal of office to be made for the Agency of  
12 such design as the Commissioner shall approve.

13 “(2) JUDICIAL NOTICE.—Judicial notice shall  
14 be taken of the seal made under paragraph (1).

15 “(e) DATA EXCHANGES.—

16 “(1) DISCLOSURE OF RECORDS AND OTHER IN-  
17 FORMATION.—Notwithstanding any other provision  
18 of law (including subsection (b), (o), (p), (q), (r),  
19 and (u) of section 552a of title 5, United States  
20 Code)—

21 “(A) the Secretary shall disclose to the  
22 Commissioner any record or information re-  
23 quested in writing by the Commissioner for the  
24 purpose of administering the Voluntary Medi-

1           care Outpatient Prescription Drug Discount  
2           and Security Program under subpart 1; and

3           “(B) the Commissioner shall disclose to  
4           the Secretary or to any State any record or in-  
5           formation requested in writing by the Secretary  
6           to be so disclosed for the purpose of admin-  
7           istering any program administered by the Sec-  
8           retary.

9           “(2) QUALITY DATA.—

10           “(A) AGREEMENT.—The Commissioner  
11           and the Secretary shall enter into an agreement  
12           under which the Commissioner provides the  
13           Secretary data concerning the quality of the  
14           services and information provided to bene-  
15           ficiaries of the Voluntary Medicare Outpatient  
16           Prescription Drug Discount and Security Pro-  
17           gram under subpart 1 and the administrative  
18           services provided by the Agency in support of  
19           such program.

20           “(B) TERMS AND CONDITIONS.—The  
21           agreement entered into under subparagraph (A)  
22           shall stipulate the type of data to be provided  
23           and the terms and conditions under which the  
24           data are to be provided.

1           “(3) EXCHANGE OF OTHER DATA.—The Com-  
2           missioner and the Secretary shall periodically review  
3           the need for exchanges of information not referred  
4           to in paragraph (1) or (2) and shall enter into such  
5           agreements as may be necessary and appropriate to  
6           provide information to each other or to States in  
7           order to meet the programmatic needs of the re-  
8           questing agencies.

9           “(4) ROUTINE USE.—

10           “(A) IN GENERAL.—Any disclosure from a  
11           system of records (as defined in section  
12           552a(a)(5) of title 5, United States Code) pur-  
13           suant to this subsection shall be made as a rou-  
14           tine use under subsection (b)(3) of section 552a  
15           of such title (unless otherwise authorized under  
16           such section 552a).

17           “(B) COMPUTERIZED COMPARISON.—Any  
18           computerized comparison of records, including  
19           matching programs, between the Commissioner  
20           and the Secretary shall be conducted in accord-  
21           ance with subsections (o), (p), (q), (r), and (u)  
22           of section 552a of title 5, United States Code.

23           “(5) TIMELY ACTION.—The Commissioner and  
24           the Secretary shall each ensure that timely action is  
25           taken to establish any necessary routine uses for dis-



1 closures required under paragraph (1) or agreed to  
 2 pursuant to paragraph (3).

3 “DUTIES AND AUTHORITY OF THE SECRETARY

4 “SEC. 1860O. (a) DUTIES.—The Secretary shall per-  
 5 form the duties imposed upon the Secretary by this Act.

6 “(b) AUTHORITY.—

7 “(1) IN GENERAL.—The Secretary is authorized  
 8 to appoint and fix the compensation of such officers  
 9 and employees, and to make such expenditures as  
 10 may be necessary for carrying out the functions of  
 11 the Secretary under this Act.

12 “(2) APPOINTMENT OF ATTORNEYS AND EX-  
 13 PERTS.—The Secretary may appoint attorneys and  
 14 experts without regard to the civil service laws.”.

15 (b) CONFORMING REFERENCES TO PREVIOUS PART  
 16 D.—

17 (1) IN GENERAL.—Any reference in law (in ef-  
 18 fect before the date of enactment of this Act) to part  
 19 D of title XVIII of the Social Security Act is deemed  
 20 a reference to part E of such title (as in effect after  
 21 such date).

22 (2) SUBMISSION OF LEGISLATIVE PROPOSAL.—  
 23 Not later than 6 months after the date of enactment  
 24 of this Act, the Commissioner of Medicare Prescrip-  
 25 tion Drugs and the Secretary of Health and Human  
 26 Services shall submit to the appropriate committees

1 of Congress a legislative proposal providing for such  
 2 technical and conforming amendments in the law as  
 3 are required by the provisions of this title.

4 **SEC. 3. EXCLUSION OF PART D COSTS FROM DETERMINA-**  
 5 **TION OF PART B MONTHLY PREMIUM.**

6 Section 1839(g) of the Social Security Act (42 U.S.C.  
 7 1395r(g)) is amended—

8 (1) by striking “attributable to the application  
 9 of section” and inserting “attributable to—

10 “(1) the application of section”;

11 (2) by striking the period and inserting “;  
 12 and”; and

13 (3) by adding at the end the following new  
 14 paragraph:

15 “(2) the Voluntary Medicare Outpatient Pre-  
 16 scription Drug Discount and Security Program  
 17 under part D.”.

18 **SEC. 4. MEDIGAP REVISIONS.**

19 Section 1882 of the Social Security Act (42 U.S.C.  
 20 1395ss) is amended by adding at the end the following  
 21 new subsection:

22 “(v) MODERNIZATION OF MEDICARE SUPPLEMENTAL  
 23 POLICIES.—

24 “(1) PROMULGATION OF MODEL REGULA-  
 25 TION.—

1           “(A) NAIC MODEL REGULATION.—If,  
2           within 9 months after the date of enactment of  
3           the Medicare Rx Drug Discount and Security  
4           Act of 2000, the National Association of Insur-  
5           ance Commissioners (in this subsection referred  
6           to as the ‘NAIC’) changes the 1991 NAIC  
7           Model Regulation (described in subsection (p))  
8           to revise the benefit package classified as ‘J’  
9           under the standards established by subsection  
10          (p)(2) (including the benefit package classified  
11          as ‘J’ with a high deductible feature, as de-  
12          scribed in subsection (p)(11)) so that—

13               “(i) the coverage for outpatient pre-  
14               scription drugs available under such ben-  
15               efit package is replaced with coverage for  
16               outpatient prescription drugs that com-  
17               pliments but does not duplicate the bene-  
18               fits for outpatient prescription drugs that  
19               beneficiaries are otherwise entitled to  
20               under this title;

21               “(ii) a uniform format is used in the  
22               policy with respect to such revised benefits;  
23               and

24               “(iii) such revised standards meet any  
25               additional requirements imposed by the

Medicare Rx Drug Discount and Security  
Act of 2000;

subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2002, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ‘2002 NAIC Model Regulation’).

“(B) REGULATION BY THE SECRETARY.—

If the NAIC does not make the changes in the 1991 NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2002, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed

1 regulation referred to in this section as the  
2 ‘2002 Federal Regulation’).

3 “(C) CONSULTATION WITH WORKING  
4 GROUP.—In promulgating standards under this  
5 paragraph, the NAIC or Secretary shall consult  
6 with a working group similar to the working  
7 group described in subsection (p)(1)(D).

8 “(D) MODIFICATION OF STANDARDS IF  
9 MEDICARE BENEFITS CHANGE.—If benefits (in-  
10 cluding deductibles and coinsurance) under part  
11 D of this title are changed and the Secretary  
12 determines, in consultation with the NAIC, that  
13 changes in the 2002 NAIC Model Regulation or  
14 2002 Federal Regulation are needed to reflect  
15 such changes, the preceding provisions of this  
16 paragraph shall apply to the modification of  
17 standards previously established in the same  
18 manner as they applied to the original estab-  
19 lishment of such standards.

20 “(2) CONSTRUCTION OF BENEFITS IN OTHER  
21 MEDICARE SUPPLEMENTAL POLICIES.—Nothing in  
22 the benefit packages classified as ‘A’ through ‘I’  
23 under the standards established by subsection (p)(2)  
24 (including the benefit package classified as ‘F’ with  
25 a high deductible feature, as described in subsection

(p)(11)) shall be construed as providing coverage for benefits for which payment may be made under part D.

“(3) APPLICATION OF PROVISIONS AND CONFORMING REFERENCES.—

“(A) APPLICATION OF PROVISIONS.—The provisions of paragraphs (4) through (10) of subsection (p) shall apply under this section, except that—

“(i) any reference to the model regulation applicable under that subsection shall be deemed to be a reference to the applicable 2002 NAIC Model Regulation or 2002 Federal Regulation; and

“(ii) any reference to a date under such paragraphs of subsection (p) shall be deemed to be a reference to the appropriate date under this subsection.

“(B) OTHER REFERENCES.—Any reference to a provision of subsection (p) or a date applicable under such subsection shall also be considered to be a reference to the appropriate provision or date under this subsection.”.

○